

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 96-090**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### **2. Form, Style and Placement in Administrative Code**

a. In the treatment clause to SECTION 1, the second comma should be replaced by the word “and.”

b. In s. HSS 105.53 (1), the acronym “CESAs” could replace the phrase “cooperative educational service agencies (CESAs),” since the acronym “CESA” is defined in s. HSS 101.03 (24m), created in SECTION 1.

c. All subunits of a rule should end with a period, except introductory material, which ends with a colon. [See s. 1.03 (intro.), Manual.] For example, the semicolons in s. HSS 107.36 (1) (a) 2. and 3. should all be replaced by periods. The “and” in the next-to-the-last subdivision paragraph should be deleted since the introductory material says “all of the following.” Similar changes should be made throughout the rule.

d. In s. HSS 107.36 (1) (a) 5., “HMO” should replace “health maintenance organization (HMO)” since “HMO” is defined in current s. HSS 101.03 (70).

e. If the material in s. HSS 107.36 (1) (a) 3. d. meets the definition of “rule” in s. 227.01 (13), Stats., it should be promulgated as such rather than included in a handbook. [Also see s. 227.10 (1), Stats.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the statement of statutory authority, on the cover page to the rule, the reference to s. 49.45 (3a) (b) and (c), Stats., should be changed to s. 49.45 (39) (b) and (c), Stats.

b. In s. HSS 101.03 (78r), the statutory reference should read “s. 51.44 (1) (ar), Stats.” Also, in this provision, it is suggested that the word “program” be replaced by the word “plan.”

c. In s. HSS 107.36 (2) (b) 4., the citation on line 4 should be changed to read “s. 49.45 (39) (b), Stats.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. As a general comment, this rule is deficient in that it does not include certain items specifically required to be included by s. 49.45 (39) (b) and (c), Stats., the provisions cited as statutory authority for the rule. Section 49.45 (39), Stats., contains the language creating “school medical services” as a new Medical Assistance (MA) benefit. Under that provision, a school district or CESA electing to provide school medical services and meeting all certification and reporting requirements are to be reimbursed for 60% of the federal share of allowable charges for the school medical services that they provide and for allowable administrative costs. In s. 49.45 (39) (b), Stats., the department is directed to promulgate rules “establishing a methodology for making reimbursements under this paragraph.” Under s. 49.45 (39) (c), Stats., the department is also required to promulgate rules “establishing specific certification and reporting requirements with respect to school medical services under this subsection.” The rule is deficient with respect to the requirements of both pars. (b) and (c).

First, it does not set forth a methodology for making reimbursements either for school medical services provided or for allowable administrative costs, as required by par. (b). There is no description of how a school district or CESA is to obtain reimbursement for services provided or administrative costs incurred providing the services. In fact, there is only one reference to the word “reimbursement” in the entire rule--in s. HSS 107.36 (1) (a) 3. e., which requires service providers to keep a record of, among other things, “(a) description and the cost of each equipment item with sufficient detail to allow the MA program to determine the reimbursement rate.” There are no references to allowable administrative costs in the rule, so school districts and CESAs are given no guidance as to the parameters of reimbursement for those costs, such as which costs are reimbursable and how reimbursement is to be obtained.

Second, the rule does not set forth “specific certification and reporting requirements” with respect to school medical services, as required by par. (c). With regard to certification, the rule merely indicates in s. HSS 105.53 (1) that for MA certification, school-based service providers shall be school districts and CESAs and, in s. HSS 105.53 (2) that no school district or CESA may be certified as providers of various services delineated in that subsection. There is no discussion of the process by which a school district or CESA applies for certification as an MA provider, to whom they must apply or the criteria for obtaining certification. Further, there is no mention of “reporting requirements” anywhere in the rule. Under s. HSS 107.36 (1) (a) 2. and 3., the service providers are required to keep records with specified information on each recipient of school-based services and for each date of service, but there is no indication that

these records are to be turned into “reports” that must be submitted to anyone. The reporting requirement mandated by statute should be stated explicitly and should indicate to whom and when the reports are to be made and the requisite elements of the reports.

Generally, the department should review the requirements of s. 49.45 (39) (b) and (c), Stats., and augment the rule to comply with all of those requirements. Note that it would not be adequate simply to refer to provisions for reimbursement, certification and reporting applicable to the general MA program, since the governing statute clearly contemplates delineation of a reimbursement methodology and certification and reporting requirements tailored to the school medical services benefit and providers of those services.

If the department feels that there are provisions in the rule that address the requirements of s. 49.45 (39) (b) and (c), Stats., it would be helpful to a reader if those provisions were clearly labeled as reimbursement requirements and reporting requirements. This is addressed further in section 5. of this report.

b. The following comments pertain to s. HSS 105.53:

- (1) The title refers to “school-based services.” The statutory provision governing these services refers instead to “school medical services” and defines that term in s. 49.45 (39) (a) 2., Stats. For consistency with the statutory provision, it would be preferable if the rule also referred to these services as “school medical services.” All occurrences of the phrase “school-based services” in the rule should be changed to “school medical services.” Also, for consistency with some of the other titles in ch. HSS 105, the department may wish to include the word “providers” in the title, so that it would read: “SCHOOL MEDICAL SERVICES PROVIDERS.”
- (2) This section is created in ch. HSS 105, which is the MA chapter dealing with provider certification. Therefore, the “specific certification...requirements with respect to school medical services...” required by s. 49.45 (39) (c), Stats., should be included in this section. To accomplish this, it is first suggested that the language in sub. (1) be rewritten to state more clearly that school districts and CESAs are the entities that may be certified as school medical services providers. The sentence could read: “For MA certification, a school medical services provider shall be either a school district under ch. 120, Stats., or a CESA under ch. 116, Stats.”

It is then suggested that all other certification requirements pertaining specifically to school medical services providers be inserted in sub. (2), in place of the language currently contained in that subsection. The new language should provide adequate information to inform school districts and CESAs fully of the requirements for and ramifications of obtaining MA certification. In drafting this provision, the department should carefully review current ch. HSS 105 to determine and specify which current certification provisions apply or do not apply to school districts and CESAs. For example, are school districts and CESAs considered “institutional providers,” “noninstitutional providers” or “group billing providers” under s. HSS 105.01 (4)? If

they are institutional providers, they should be added to the definition of that term in s. HSS 101.03 (88). “Non-institutional provider” is defined in current s. HSS 101.03 (105).

- (3) The meaning of the language in sub. (2) is unclear and should either be clarified or eliminated. The provision states that no school district or CESA may be certified as a provider of nursing services under ss. HSS 105.19 and 105.20, physical therapy services under s. HSS 105.27, and so forth. Does this mean that a school district or CESA does not have to be certified as providers of those individual types of services, since they are generically certified as school medical services providers? If this language is necessary, its meaning should be clarified and it should be placed in a sub. (3), to follow the previously described certification requirements which are to be placed in a rewritten sub. (2).

c. As currently organized, the material in s. HSS 107.36 is difficult to read and understand. In this comment, a suggested reorganization of the entire section is set forth. In comments d. through s., specific comments are made regarding the contents of various provisions within s. HSS 107.36. The suggested reorganization is as follows:

- (1) Subsection (1) would be titled “DEFINITIONS.” and would include definitions of the terms “school medical services” [which could be done by reference to the statutory definition of that term in s. 49.45 (39) (a) 2., Stats.] and “medically necessary,” which is defined in s. HSS 107.36 (2) (b). The department may also wish to consider whether it would be useful to move the definitions of “CESA,” “IEP” and “IFSP” out of s. HSS 101.03 (in SECTION 1 of the rule) and into this definition provision, since the latter two terms appear to be used only in s. HSS 107.36. [If this is done, perhaps “CESA” should also be defined in s. HSS 105.01 (2), since that term occurs in s. HSS 105.53.]
- (2) Subsection (2) would be titled “COVERED SERVICES.” It could include as an introductory sentence the material currently in sub. (1) (a) 1., but would not include the language in subds. 2. through 5. or subd. 7. Following a brief introductory sentence or paragraph, a sentence would be inserted to introduce the list of covered services as follows: “These services are the following:”. Immediately following this sentence, the covered services currently set forth in sub. (1) (b) through (i) would then be delineated. This organization is preferable to the current arrangement of the rule, in which the title “COVERED SERVICES” appears two full pages before the actual delineation of covered services. The language in sub. (1) (a) 6. relating to circumstances under which consultation, case monitoring and coordination are included in MA-covered services should be included in this subsection.
- (3) Subsection (3) would be titled “LIMITATIONS.” and would contain the material currently in sub. (2) relating to age limit and medically necessary services.

- (4) Subsection (4) would be titled "NON-COVERED SERVICES." and would include the material currently contained in sub. (3).
- (5) Subsection (5) would be titled "RECORD-KEEPING REQUIREMENTS." and would contain the language relating to records which a provider must keep, currently set forth in sub. (1) (a) 2. and 3.
- (6) Subsection (6) would be titled "REPORTING REQUIREMENTS." and would contain the "reporting requirements with respect to school medical services" which are supposed to be included in this rule pursuant to s. 49.45 (39) (c), Stats.
- (7) Subsection (7) would be titled "REIMBURSEMENT." and would contain the provisions "establishing a methodology for making reimbursements" required by s. 49.45 (39) (b), Stats.
- (8) Subsection (8), whose title would be determined by the department depending on the material included, could include the language currently in sub. (1) (a) 4. relating to annual audits and the language currently in sub. (1) (a) 7., relating to waiver of certain requirements and billing for the period July 1, 1995 and June 30, 1996. Due to the awkward drafting of these two provisions, it is unclear whether they should be combined in a single subsection. The department is encouraged to review these two provisions and determine their appropriate place and title or titles in the reorganized section.
- (9) Subsection (9) would be titled "COORDINATION WITH HEALTH MAINTENANCE ORGANIZATIONS." and would contain the information currently in sub. (1) (a) 5. relating to school medical services providers entering into memoranda of understanding with HMOs to coordinate the provision of services to students enrolled in an MA-HMO.
- (10) It would be possible to include what has been suggested as subs. (5) to (9) in one subsection titled "GENERAL PROVISIONS." However, if this is done, it is suggested that paragraph titles be used to identify clearly each of these distinct items.

d. The remaining comments in this report pertain to language contained in the various provisions of s. HSS 107.36 as currently organized and drafted. These comments should be considered in conjunction with the organizational comments on the various provisions of this section in the preceding comment. The title to subs. (1) and (2) should be followed by periods. The first sentence of sub. (1) (a) 1. may be unnecessary if the suggestion is followed to include a definition of "school medical services" in a definitions subsection. If the first sentence is deleted, the phrase "school medical services" should replace the words "the services" in the second sentence.

Does the requirement that the persons delivering school medical services be licensed under ch. PI 3 pertain even to persons providing transportation services pursuant to sub. (1) (h)? Note that the proper reference to the Department of Public Instruction rule is to ch. PI 3, rather than s. PI 3.

e. In sub. (1) (a) 2. b., reference is made to a “prescription” or “referral” for a service. Who may issue a prescription for a school medical service? Is it only a doctor’s prescription? Also, what is meant by a “referral” for a service? Who may issue a “referral”?

In sub. (1) (a) 2. c., what is meant by keeping a record of the “documentation used” to develop the recipient’s individualized education plan (IEP) or individual family service plan (IFSP)? How is that documentation supposed to be detailed in a record?

In sub. (1) (a) 2. d., where are the “treatment goals” and “treatment plans” set forth? Are they part of a recipient’s IEP or IFSP?

f. In sub. (1) (a) 3. e., what is meant by the term “equipment item”?

g. In sub. (1) (a) 3. g., how is the recipient’s response to the service different from the recipient’s progress? Also, what is the progress in reference to? Is it progress towards the treatment goals mentioned in sub. (1) (a) 2. d.?

h. Subsection (1) (a) 4. requires that the statutorily required annual audit of school district accounts and CESA receipts and expenditures include evidence “through instructions distributed by the department under s. HSS 108.02 (4)” that requirements under s. 49.45 (39) (b), Stats., for paying expenses and billing are being met. First, how will the persons performing the school district and CESA audits know that the audits must include evidence that the requirements for paying MA expenses and billing are being met. Also, what is meant by including “evidence through instructions”? It sounds like the instructions will provide the evidence. Perhaps the phrase should be rewritten to read: “shall include evidence, in accordance with instructions distributed....” Finally, this provision implies that s. 49.45 (39) (b), Stats., includes requirements relating to both paying expenses and billing. However, the statutory provision does not mention billing.

i. Under sub. (1) (a) 5., when a recipient in a school district or CESA receives MA-covered services from both a school-based service provider and an MA-assigned HMO, the school-based service provider must contact the HMO to create and sign a joint memorandum of understanding to coordinate the provision of services. Is this to be done only when the MA-covered services from the school-based provider are the same as or similar to services provided by the HMO? The question occurs because in the next sentence, relating to services from an MA fee-for-service provider and a school-based provider, the phrase “similar” services is used. Also, with regard to the HMO requirement, does the term “school-based service provider” refer to the individual person providing a particular service to a student or does it refer to the school district or CESA itself? Also, this provision requires that contacts between the school-based service provider and the HMO must be documented. Is documentation required in addition to the written memorandum of understanding? Finally, with regard to the fee-for-service provider provision, what is meant by the requirement to provide “components” of the multidisciplinary team evaluation to the fee-for-service provider? Does that mean relevant portions of a written evaluation?

j. Subsection (1) (a) 6. makes two references to “consultation, case monitoring and coordination” as being MA-covered services. Although “consultation” is defined in s. HSS 101.03 (32), the other two terms are not defined there. Is it obvious what is meant by those terms? If not, perhaps some further explanation should be given.

k. The language in sub. (1) (a) 7. is vague and confusing and should be rewritten to state more explicitly what is intended. Also, it is suggested that a plain English summary of the provision be included in the analysis to the rule. The reference to 42 C.F.R. ch. IV should be explained in a note, since its contents are not obvious. Also, what is meant by “other federal mandates”? Are those federal laws or regulations outside of the MA program or are they federal MA laws and regulations? Finally, the last sentence provides that services provided between July 1, 1995 and June 30, 1996 may be billed through June 30, 1997 “to the extent allowed by federal law.” To what extent is this billing allowed by federal law? Also, does this sentence permit schools to bill MA for school medical services provided prior to enactment of the law creating the school medical services MA benefit? That provision was enacted in 1995 Wisconsin Act 27, which did not take effect until July 29, 1995.

l. Section HSS 107.36 (1) (b) and several succeeding paragraphs which set forth particular covered services provide that the services shall be performed by or under the direction of specified professionals licensed by the Department of Public Instruction under various provisions of ch. PI 3. How is this language to be reconciled with the language in sub. (1) (a) 1. that states that the school district or CESA shall ensure that individuals who deliver the services, whether employed directly by or under contract with the school district or CESA, are licensed under ch. PI 3? If the department intends to permit licensed individuals to supervise the delivery of school medical services by nonlicensed persons, the language in sub. (1) (a) 1. should be changed to reflect that fact. If that is not the department’s intent, the language in par. (b) and elsewhere should be changed to eliminate the reference to services performed “under the direction of” a licensed person.

m. In s. HSS 107.36 (1) (c), occupational therapy services which identify, treat, rehabilitate, restore, improve or compensate for medical problems that interfere with age-appropriate functional performance are covered school medical services. If each of those verbs is to be followed by “medical problems,” it appears that “rehabilitate” and “restore” do not belong in that list, since the goal is not to rehabilitate or restore medical problems. This sentence should be rewritten to avoid this reading, as should the same language in par. (d). Also, in par. (c), should the word “evaluation” on line 4 be followed by the phrase “to determine an individual’s need for occupational therapy,” to parallel the similar language in par. (d) relating to physical therapy services?

n. In s. HSS 107.36 (1) (e), should CESA staff be mentioned as well as school district staff on line 5? To whom may a registered or licensed practical nurse delegate responsibility “under nursing protocols”? Also, this provision provides that the nursing services must be prescribed or recommended by a physician or an advanced practiced nurse who has prescribing authority. Must this recommendation be in writing? Should it be included in the records which providers must keep under s. HSS 107.36 (1) (a) 2. b., as are prescriptions or referrals?

o. Reference is made in s. HSS 107.36 (1) (g) to the Individuals with Disabilities Education Act and the acronym for that Act is also given. Since the acronym is used elsewhere in the rule, it is suggested that the acronym be defined.

p. In s. HSS 107.36 (1) (h), it appears that the MA-covered service referred to on line 3 must be a school medical service. If that is the case, the phrase “school medical” should be inserted before the word “service” on that line. Also, in that provision, reference is made to a

school-based service provided in the school and to a school-based service provided at a non-school location. It should be clarified under what circumstances a school medical service may be performed at a location other than a school.

q. In s. HSS 107.36 (1) (i), the word “as” on line 1 should be changed to “equipment.” Also, it is suggested that the phrase “, rather than the school district or the CESA,” be inserted after the word “recipient” on line 5 in place of the phrase “not the school district or the CESA” at the end of the sentence. Finally, is a physician’s or other professional’s prescription or referral necessary for durable medical equipment to be a covered service?

r. In s. HSS 107.36 (2) (b), who determines whether a service is “medically necessary”? Further, there is no mention of requirements for prescriptions in s. 49.45 (39) (b), Stats. Is there another statutory or rule provision that contains the prescription requirements?

s. Section HSS 107.36 (3) (k) provides that school health program services that are not in an IEP or IFSP are not services covered as school medical services. Could this paragraph be eliminated in light of par. (c), which provides that services that are not in the recipient’s IEP or IFSP are not covered school medical services?